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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 MARCELINO DAVID CONTRERAS
13 660 Starfish Drive
Vallejo, CA 94591

14 Certified Public Accountant Certificate No. CPA 36983
15
16

Respondent.

Case No. AC-2007-43

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 **FINDINGS OF FACT**

18 1. On or about September 11, 2007, Complainant Carol Sigmann, in her
19 official capacity as the Executive Officer of the California Board of Accountancy, Department of
20 Consumer Affairs, filed Accusation No. AC-2007-43 against Marcelino David Contreras
21 (Respondent) before the California Board of Accountancy.

22 2. On or about January 28, 1983, the California Board of Accountancy
23 (Board) issued Certified Public Accountant Certificate No. CPA 36983 to Respondent. The
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and expired on August 31, 2007, and has not been renewed.

26 3. On or about September 28, 2007, Ryan M. Mallard, an employee of the
27 Department of Justice, served by Certified and First Class Mail a copy of Accusation
28 No. AC-2007-43, Statement to Respondent, Notice of Defense, Request for Discovery, and

1 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
2 with the Board, which was and is 660 Starfish Drive, Vallejo, CA 94591. A copy of the
3 Accusation and Declaration of Service are attached as Exhibit A, and are incorporated herein by
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

8 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
10 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
11 respondent's right to a hearing, but the agency, in its discretion, may nevertheless grant a
12 hearing."

13 6. Respondent failed to file a Notice of Defense within 15 days after service
14 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
15 Accusation No. AC-2007-43.

16 7. California Government Code section 11520 states, in pertinent part:
17 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
18 agency may take action based upon the respondent's express admissions or upon other evidence
19 and affidavits may be used as evidence without any notice to respondent."

20 8. Pursuant to its authority under Government Code section 11520, the Board
21 finds Respondent is in default. The Board will take action without further hearing and, based on
22 the evidence before it, finds that the allegations in Accusation No. AC-2007-43 are true.

23 9. The total costs for investigation and enforcement are \$2,412.25 as of
24 November 13, 2007.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent Marcelino David
27 Contreras has subjected his Certified Public Accountant Certificate No. CPA 36983 to discipline.

28 2. Service of Accusation No. AC-2007-43 and related documents was proper

1 and in accordance with the law.

2 3. The agency has jurisdiction to adjudicate this case by default.

3 4. The California Board of Accountancy is authorized to revoke Respondent's
4 Certified Public Accountant Certificate based upon the conviction of a crime substantially related
5 to the qualifications, functions, and duties of a CPA under Business and Professions Code
6 sections 490 and 5100(a), to wit: the crime of embezzlement by a public officer; and the failure
7 to report a reportable event under Business and Professions Code section 5063(a)(1), to wit:
8 Respondent's failure to report his embezzlement conviction, as alleged in the Accusation.

9 **ORDER**

10 IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA
11 36983, heretofore issued to Respondent, MARCELINO DAVID CONTRERAS, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may
13 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
14 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
15 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
16 statute.

17 This Decision shall become effective on February 24, 2008.

18 It is so ORDERED January 25, 2008.

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21 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
22 DEPARTMENT OF CONSUMER AFFAIRS

23 Attachments: Exhibit A (Accusation No. AC-2007-43 and Declaration of Service)
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10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-43

13 MARCELINO DAVID CONTRERAS
660 Starfish Drive
14 Vallejo, CA 94591

A C C U S A T I O N

15 Certified Public Accountant Certificate No.
CPA 36983

16
17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer
22 Affairs.

23 2. On or about January 28, 1983, the California Board of Accountancy issued
24 Certified Public Accountant Certificate Number CPA 36983 to Marcelino David Contreras
25 (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times
26 relevant to the charges brought herein and expired on August 31, 2007, and has not been renewed.

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1 or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment
2 of conviction has been affirmed on appeal or when an order granting probation is made, suspending
3 the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment."

6 8. Section 5107(a) of the Code states:

7 "The executive officer of the board may request the administrative law judge, as part
8 of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
9 found to have committed a violation or violations of this chapter to pay to the board all reasonable
10 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The
11 board shall not recover costs incurred at the administrative hearing."

12 9. Section 5063(a)(1) of the Code requires a licensee to report in writing to the
13 Board within 30 days all felony convictions and convictions of any crime related to the
14 qualifications, functions or duties of a licensee or to acts or activities in the course and scope of the
15 practice of public accountancy; or involving theft, embezzlement, misappropriation of funds or
16 property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of
17 false, fraudulent, or materially misleading financial statements, reports or information.

18 10. Title 16, California Code of Regulations, Section 99 (Board Rule 99),
19 provides that a crime or act is substantially related to the qualifications, functions, or duties of a CPA
20 if, to a substantial degree, it evidences present or potential unfitness to perform the functions
21 authorized by the licensee's certificate or permit in a manner consistent with the public health, safety,
22 or welfare, including but not limited to, those crimes involving fiscal dishonesty, or breach of
23 fiduciary responsibility of any kind.

24 FIRST CAUSE FOR DISCIPLINE

25 (Conviction of a Crime)

26 11. Respondent's license is subject to disciplinary action under Sections 490 and
27 5100(a) in that on June 28, 2006, in a criminal proceeding entitled *People of the State of California*
28 *v. Marcelino David Contreras*, in San Francisco County Superior Court, Case No. 2221339,

respondent was convicted by guilty plea of a felony violation of Penal Code Section 424 (Embezzlement by Public Officer). At all times relevant to the conviction, respondent held an active California CPA license.

12. Criminal Charges. In *People of the State of California v. Marcelino David Contreras*, Respondent was originally charged with one count of embezzlement by a public officer in violation of Penal Code Section 424 (Count 1) and one count of embezzling property by public/private officer in violation of Penal Code Section 504 (Count 2).

13. Plea Agreement. Respondent pled guilty to Count 1.

14. Sentence. Respondent was sentenced to probation for five years wherein he was ordered to serve a term of one year in county jail (served through home detention) and to pay criminal monetary penalties of \$200 and restitution of \$20,000.

15. Incorporating by reference the allegations in paragraphs 11 through 14, above, Respondent's Certified Public Accountant certificate is subject to discipline under Code Sections 490 and 5100(a) in that the felony conviction is a crime substantially related to the qualifications, functions and duties of a CPA within the meaning of Board Rule 99. Respondent pled guilty to embezzlement, under circumstances involving his misappropriation of public moneys for personal use, which constitutes a crime substantially related to the practice of public accountancy, in that his duties to receive, hold, transfer and distribute public moneys were directly related to his duties as a certified public accountant and to his fitness to practice.

SECOND CAUSE FOR DISCIPLINE

(Failure to Report a Reportable Event)

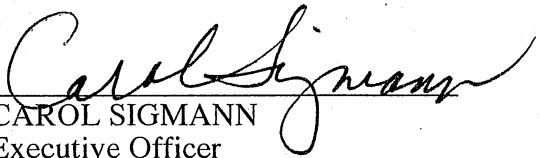
16. Respondent's license is subject to disciplinary action under Section 5063(a)(1) in that on June 28, 2006, Respondent was convicted of felony embezzlement but he did not report the conviction to the Board. The Board received notice of Respondent's conviction through a third party, via the Department of Justice's "Subsequent Arrest Notification" related to the Board's fingerprint submission for the licensee's application. Respondent's Certified Public Accountant certificate is subject to discipline under Code Section 5063(a)(1) in that he failed to report his conviction to the Board.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline on Certified Public Accountant Certificate Number CPA 36983, issued to Marcelino David Contreras;
2. Ordering Marcelino David Contreras to pay the California Board of Accountancy the reasonable costs of the investigation and prosecution of this case, pursuant to Business and Professions Code Section 5107;
3. Taking such other and further action as deemed necessary and proper.

DATED: September 11, 2007


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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